



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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July 2, 2015

Mr. Kenneth E. Scott #910421
Pendleton Correctional Facility
4490 W. Reformatory Rd
Pendleton, IN 46064

Re: Formal Complaint 15-FC-169; Alleged Violation of the Access to Public Records Act by Pendleton Correctional Facility

Dear Mr. Scott,

This advisory opinion is in response to your formal complaint, which alleges Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Facility responded to your complaint via Mr. Dushan Zatecky and Ms. Michelle Rains. Their response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 22, 2015.

BACKGROUND

Your complaint dated May 22, 2015, alleges the Pendleton Correctional Facility violated the Access to Public Records Act by failing to allow you to access the Administration Building in order to review the records you requested.

From the information you submitted on March 27, 2015, you requested the Facility provide you with certain records regarding Cable/Satellite Services at the facility. The Facility contends your request was received and responded to on March 27, 2015 and April 7, 2015. The Facility indicated the requested documents (75 in number) would be made available to you and charged at \$.10 per page at a cost of \$7.50. You submitted a follow-up request on May 4, 2015 which was received by the Facility on May 7, 2015. In the follow-up request you stated you were unable to pay for the cost of copying the records and requested the facility allow you to review the records and take notes. In the Facility's response, dated May 7, 2015, the Facility acknowledged your right to inspect and copy the requested records, but that inspection could only occur in the Administration Building. You contend that because the Facility will not allow you to access to the Administration Building, the Facility is in violation of the APRA.



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ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Pendleton Correctional Facility is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Facility’s disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

There is no allegation the Facility did not respond to your request in a timely manner. You only contend the APRA is being violated by the Facility restricting your access to the Administration Building, and hence the public records you are entitled to inspect. While it is true the APRA allows you to access and inspect these records, the Facility cites Ind. Code § 11-11-6-1, as a justification for restricting your access to the Administration Building. The relevant portion of the statute provides that,

The department shall adopt policies and procedures for the protection of committed persons, including:

(1) the monitoring of committed persons whose presence in the general population of a facility or program constitutes a threat of physical danger to other persons. *Ind. Code § 11-11-6-1(a).*

The statute allows the Facility to adopt policies and procedures to maintain the safety and security of the facility. The Facility maintains that offenders inside the walled facility do not have access to the Administration Building, per facility policy. You contend the visitation area is available to offenders in the walled facility and is also part of the Administration Building. While it seems there would be no harm in allowing you to inspect the records in the visitation area; the policies of the Facility are not subject to review of this office. That being said, if there is an alternative viewing area for the records where you can inspect them securely, I encourage the Facility to make reasonable accommodations if possible within the bounds of security and safety.



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CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Pendleton Correctional Facility has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Dushan Zatecky
Ms. Michelle Rains